

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>ASPEN RESIDENCE CLUB & HOTEL,</p> <p>v.</p> <p>Respondent:</p> <p>PITKIN COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 62746</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on May 15, 2014, Diane M. DeVries and Debra A. Baumbach presiding. Petitioner was represented by Gregory S. Gordon, Esq. Respondent was represented by Laura C. Makar, Esq. Petitioner is protesting the 2013 actual value of the subject property.

Subject property is described as follows:

**Aspen Residence Club & Hotel
315 E. Dean Street
Aspen, Colorado 81611
R019419 + 24 Units B20 through B65**

The subject property consists of 25 individual residential condominium units that were created from what was originally a standalone St. Regis Hotel. In 2005, the hotel was converted into a condominium regime containing two commercial units comprising the majority of the original hotel. The east wing of the original hotel was converted from 98 hotel rooms into 25 individual two and three bedroom condominium residential units. The residential units were made part of a fractional interest ownership where separate fee simple interests were sold for a 4/52 interest of an individual condominium. The remainder of the original hotel consists of two “units”, the Hotel unit and the Commercial unit. The Hotel unit includes 179 guest rooms, two restaurants, retail space, spa facility and conference rooms. The Commercial unit includes administrative offices. The Hotel unit and Commercial unit are not part of the appeal.

The following is Petitioner's requested values and Respondent's assigned values for tax year 2013:

Schedule Numbers	Aspen Residence Club Condominium Numbers	Petitioner's Requested Values	Respondent's Assigned Values
R019419	Unit B20	\$2,969,171.32	\$3,250,700.00
R019420	Unit B21	\$2,260,610.60	\$2,138,100.00
R019421	Unit B22	\$2,803,999.98	\$2,729,700.00
R019422	Unit B30	\$2,930,359.20	\$3,171,100.00
R019423	Unit B31	\$2,352,862.49	\$2,318,300.00
R019424	Unit B32	\$2,318,510.54	\$2,273,700.00
R019425	Unit B33	\$2,277,698.92	\$2,210,400.00
R019426	Unit B34	\$2,353,859.62	\$2,321,200.00
R019427	Unit B35	\$2,875,805.84	\$3,092,600.00
R019428	Unit B40	\$2,930,359.20	\$3,171,100.00
R019429	Unit B41	\$2,352,862.49	\$2,318,300.00
R019430	Unit B42	\$2,318,510.54	\$2,273,700.00
R019431	Unit B43	\$2,277,698.92	\$2,210,400.00
R019432	Unit B44	\$2,353,859.62	\$2,321,200.00
R019433	Unit B45	\$2,875,805.84	\$3,092,600.00
R019434	Unit B50	\$2,930,359.20	\$3,171,100.00
R019435	Unit B51	\$2,352,862.49	\$2,318,300.00
R019436	Unit B52	\$2,318,510.54	\$2,273,700.00
R019437	Unit B53	\$2,277,698.92	\$2,210,400.00
R019438	Unit B54	\$2,353,859.62	\$2,321,200.00
R019439	Unit B55	\$2,875,805.84	\$3,092,600.00
R019440	Unit B60	\$2,824,508.13	\$3,177,600.00
R019441	Unit B62	\$2,282,153.39	\$2,335,500.00
R019442	Unit B64	\$2,396,694.11	\$2,516,200.00
R019443	Unit B65	\$3,019,283.83	\$3,340,400.00

Mr. Lawrence C. Fite, Certified General Appraiser with Pitkin County Assessor's Office, presented testimony explaining the basis in valuing fractional ownership interests. Mr. Fite testified the subject consisted of 25 individual residential condominium units held by multiple owners each with 4/52 fractional fee simple interest. Referring to the guidelines in the ARL 7.13, Unit Assessment Rule, and Section 39-1-106, C.R.S., Mr. Fite valued each of the units on the basis of undivided fee simple rights as opposed to fractional interest ownership. Mr. Fite testified he relied on the market approach and used the same sales for each of the 25 units. He considered the sales to be the most similar in size, style, quality, condition, location and market appeal and made adjustments for various differences affecting the values.

Petitioner's witness, Ms. Myra O'Brien, Licensed Real Estate Broker with Aspen-Snowmass Sotheby's International Realty, testified regarding her experience as a former owner of fractional

interest in the Aspen Residence Club. Ms. O'Brien argued Respondent has overvalued the units by not adequately considering the difficulties associated with fractional interest ownership versus undivided fee simple interest ownership. She described the difficulty in obtaining financing from lenders and the steady decrease in demand for fractional ownership starting in 2012. In addition, Ms. O'Brien testified there were difficulties in dealing with multiple owners in a large homeowner's association. Ms. O'Brien stated there was no control over the homeowners' dues or the costs of the amenities associated with the hotel and residences club. Ms. O'Brien believed there should be a 20% reduction in value for each of the units due to lack of marketability of fractional ownership interest as opposed to undivided fee simple ownership interest.

Ms. O'Brien testified she agreed in general with Respondent's methodology in establishing the values for fractional ownership. Ms. O'Brien discussed Respondent's Sales 1 and 5 as unsuitable for comparison as both sales were much larger than the majority of the subject units. In addition, Ms. O'Brien did not agree with Respondent's adjustments. Ms. O'Brien contended Mr. Fite made either aggressive or nominal adjustments for physical differences resulting in overstated values.

Ms. O'Brien referenced a list of condominium sales from the Assessor's website. Ms. O'Brien highlighted eight comparable sales that she considered to be most similar to the subject units. The sales ranged in an unadjusted sales price from \$759,990 to \$3,590,000 and in size from 800 to 1,911 square feet. Petitioner's witness also discussed a sale not included on the list of a newly constructed condominium located at 308 E. Hopkins as being a suitable comparison. Ms. O'Brien calculated to an average of \$1,356 per square foot and contended that an application of a 20% negative adjustment was necessary to account for fractional ownership interest. Ms. O'Brien did not make any adjustments for differences in physical characteristics nor did she conclude to an overall value for each of the units.

In concluding to a value for each of the units, Petitioner calculated a "percentage difference" between Assessor's average price per square foot (\$1,728) and Assessor's indicated per square foot values of each of the subject condominiums. The percentage difference values ranged from 0.07% to 8.56%. Afterwards, the witness subtracted the percentage difference associated with each unit from Ms. O'Brien's mean value of \$1,356, concluding to per square foot values for each individual unit. Petitioner's per square foot values for each individual unit ranged from \$1,276.88 to 1,472.03 (Column "F" of Petitioner's Exhibit "A" attached to Petitioner's Closing Statement).

Next, Petitioner's witness took Mr. Fite's average adjusted sale price for each subject unit and subtracted 20% from each value to account for fractional ownership. (Column "J" of Petitioner's Exhibit "A" attached to Petitioner's Closing Statement). And finally, Petitioner averaged the value per unit in Column "H" (the unit price calculated by multiplying the price per square foot by the number of square feet) and Column "J" concluding to the "averaged values" for each of the subject condominiums. Those averaged values ranged from \$2,260,610.60 to \$3,019,283.83.

Respondent's witness, Mr. Fite, testified he relied on five comparable sales of individual condominium units in valuing the subject 25 condominium units. The sales ranged in sales price from \$2,400,000 to \$4,995,000 and in heated square footage from 1,476 to 2,914. After adjustments were made for market conditions, floor level, location within the building, location within the City of

Aspen, quality of construction, size, design, amenities and parking, the sales ranged from \$2,530,100 to \$4,518,000. Mr. Fite concluded to a value for each of the units ranging from \$2,600,000 to \$3,800,000. Mr. Fite then allocated out the portion attributed to the 4/52 interest held by each of the owners.

Mr. Fite testified that because of the overall uniqueness of the property, the adjustments were subjective in nature due to limited data available to extract market adjustments from the sales. According to Mr. Fite, the assigned value for each of the units was lower than the indicated value and took into consideration any additional factors affecting the value of each of the units. Mr. Fite testified he did not make any negative adjustments to the sales for fractional ownership interests versus undivided interests. Mr. Fite contended that any negative perception associated with fractional ownership interests versus undivided ownership interests were considered offset by the amenities the property offered its guests.

Mr. Fite testified each of the units has a different type of club ownership plan for the condominiums owners. There were several different available plans ranging from Fixed Members allowing for two weeks in the assigned season, one week in the opposite season and one week mid-season. Premier Membership offers three weeks in the assigned season and one week mid-season. The Lifestyle Members have the same availability privileges as Premier Members but have access only every other year. Mr. Fite also presented a list of fractional interest sales located within the subject property from January 1, 2009 to June 30, 2012. As a test of reasonableness, Mr. Fite reviewed the sales and concluded to an average price per square foot of \$1,975 which is within close range to the indicated value based on the comparable sales.

The Board requested both parties to present closing arguments in writing and for Petitioner to provide the Board with Petitioner's requested values for each unit. Upon receiving the closing arguments, Petitioner presented the Board with a spreadsheet outlining Petitioner's requested value ranges and clarifying Petitioner's valuation methodology. After review of the spread sheet, the Board came upon certain information that was not presented at the hearing. The Board disregarded all new information not presented during the hearing and only gave consideration to the final value conclusions for each unit requested by Petitioner.

The burden of proof is on petitioner to show that respondent's valuation is incorrect. *Bd. Of Assessment Appeals v. Sampson*, 105 P.3d 198 (Colo. 2005). After careful consideration of the testimony and evidence presented at the hearing, the Board found Respondent's evidence the most persuasive. The Board concluded that Respondent correctly followed the directive of the ARL 7.14, Unit Assessment Rule, and Section 39-1-106, C.R.S. in valuing the subject. The Board found Respondent's market approach and adjustment calculations most persuasive. The Board was persuaded that Mr. Fite relied on appropriate market sales within the subject area and made adjustments for various differences affecting the value. The Board found that Mr. Fite's indicated value took into account all relevant factors affecting the value. In addition, the value ranges from sales within the subject property of fractional interests gave support to Respondent's value conclusions.

The Board did not find Petitioner's evidence reliable or Petitioner's witness credible. The Board was not persuaded by Petitioner's methodology in deriving an estimated value of \$1,356 per square foot. Ms. O'Brien presented an average price per square foot based on nine comparable sales but did not make any adjustments for various differences in physical characteristics affecting the values. Additionally, Petitioner's witness did not present any market evidence supporting a 20% reduction to each of the units for fractional ownership interests.

ORDER:

The petition is denied.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation of the respondent county, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered).

In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

Section 39-8-108(2), C.R.S.

DATED and MAILED this 15th day of July, 2014.

BOARD OF ASSESSMENT APPEALS

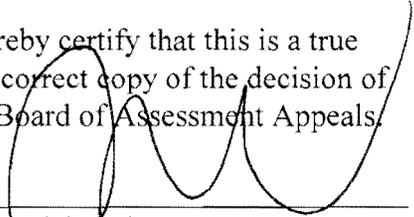
Diane M DeVries

Diane M. DeVries

Debra A Baumbach

Debra A. Baumbach

I hereby certify that this is a true
and correct copy of the decision of
the Board of Assessment Appeals.



Milla Lishchuk

